



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Jeffrey DeSimone,
Police Officer (S9999A), Lakewood
Township

Administrative Appeal

CSC Docket No. 2021-449

ISSUED: FEBRUARY 5, 2021 (SLD)

Jeffrey DeSimone, represented by Ben Weathers, Esq., appeals his removal from the eligible list for Police Officer (S9999A), Lakewood Township on the basis that he falsified his preemployment application.

The subject examination was announced with a closing date of August 31, 2019. The resultant eligible list promulgated on May 15, 2020 and expires on May 14, 2022. The appellant, a veteran, was certified on May 20, 2020 (OL200477) to the appointing authority as the second-listed eligible. In disposing of the certification, the appointing authority removed the appellant’s name from the subject eligible list on the basis that he falsified his preemployment application. In this regard, the appointing authority asserted that in response to the question: “have you ever received a summons or violation of the Motor Vehicle Laws in this state [sic] or any other,” the appellant failed to include a ticket. Specifically, it noted that the appellant only listed receiving a summons for “obstruction” on November 5, 2011. However, the New Jersey Automated Traffic System (ATS) also listed that he had received a ticket for “improper display/unclear plates” on that date which was dismissed.

On appeal to the Civil Service Commission (Commission), the appellant alleges that he did not intentionally falsify his application. Rather, he asserts that he relied on his Driver’s Abstract, which only listed the obstructing the passage of another vehicle summons for the date of November 5, 2011. The appellant asserts that upon the appointing authority bringing the error to his attention during the background investigation, he indicated that to the best of his knowledge, he had

only received the two summonses that he listed on his application. Once he was reminded that he had received a second summons for improper display on November 5, 2011, he remembered and submitted a supplemental answer to his application. The appellant argues that he merely did not remember receiving a second summons on November 5, 2011, which was almost a decade earlier, and instead he relied on his Driver's Abstract which did not list the second summons. Moreover, the appellant notes that he has served his country overseas honorably, and his failure to fully remember an incident which occurred nearly 10 years earlier does not establish a lack of integrity nor should it establish that he intentionally falsified his application.

The appellant maintains that the instant matter is similar to *In the Matter of Julio Rivera* (MSB, decided February 17, 2004) in which the Merit System Board (Board)¹ restored an individual who had omitted a charge which had been issued seven years early, but who had explained the matter when confronted with the incident. In this regard, the Board found that based on the remoteness in time, and the minor nature of the incident, the individual had not intentionally made a false statement of material fact or attempted any deception that would be sufficient to warrant his removal from the eligible list. The appellant contends that in the instant matter, he omitted a motor vehicle offense, which is not even considered a moving violation. Moreover, he notes that he made no attempt to conceal the incident as he had relied on the information provided on his Driver's Abstract which does not list the summons and he did not recall receiving it. In support, the appellant submits, *inter alia*, certifications in which he attests to the foregoing.

In response, the appointing authority, represented by Steven Secare, Esq., maintains that the appellant was not truthful in omitting the motor vehicle summons from his motor vehicle history, even though he listed the other summons he received for the same incident. The appointing authority argues that the appellant is held accountable for the accuracy of the information and any omitted or forgotten information is made at his own peril. In this regard, the appointing authority maintains that Police Officers hold highly visible and sensitive positions within the community and applicant must be of good character. Therefore, as the appellant failed to disclose material information on his application, the appointing authority asserts that it "does not want such a person to be on the police force."

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the removal of an individual from an eligible list who has made a false statement of any

¹ On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission. In this decision, the former names will be used to refer to actions which took place prior to June 30, 2008.

material fact or attempted any deception or fraud in any part of the selection or appointment process.

In the instant matter, the appointing authority requested the removal of the appellant's name on the basis that he falsified his application by failing to indicate a second summons for a November 5, 2011 incident. It maintained that the appellant had a duty to reveal all material information. However, the Commission does not agree that the appellant falsified his application. In this regard, the appellant explains that he had forgot that he had received two summonses on November 5, 2011, and that he had relied on the information contained in his Driver's Abstract which only listed the obstruction ticket. Moreover, the appointing authority fails to address whether the information was "material" to the position sought. In this regard, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. A review of the record reveals that although the appellant received two summonses on November 5, 2011, only one of them was listed in his Driver's Abstract. The record does not reveal that the appellant made any attempt to intentionally omit or conceal the information as he provided the information that was readily available to him of the summons he received on November 5, 2011. Moreover, the record reveals that this incident occurred nearly 10 years earlier, making it reasonable for the appellant to rely on the information contained on his Driver's Abstract. Based on the foregoing, the information omitted from the appellant's application, in and of itself, would not constitute sufficient cause to remove his name from the subject eligible list. Thus, the omission of this information does not amount to the falsification of a material fact from his application and does not support the removal of his name from the eligible list. *See In the Matter of Julio Rivera, supra*, (Board restored the name of an eligible who neglected to disclose that he was suspended from school for two or three days when he was 12 years old); *See also, In the Matter of Marlon Chiles* (MSB, decided September 6, 2006); *In the Matter of Daniel Labazzo* (MSB, decided September 25, 2002). Accordingly, the appointing authority has not presented a sufficient basis to remove the appellant's name from the eligible list for Police Officer (S9999A).

As the appellant is a veteran, he cannot be bypassed for appointment from the certification. Accordingly, the Commission orders that certification OL200477 be reissued and the appointing authority is ordered to redispense of the certification. Absent any other disqualifying factors presented by the appointing authority upon its background check, the appellant's appointment is mandated. *See N.J.S.A. 11A:5-6, N.J.A.C. 4A:4-4.8(a)3i and N.J.A.C. 4A:5-2.1(c)* (providing that on open-competitive lists, disabled veterans and veterans *shall be appointed* in their order of

ranking). If appointed, upon the successful completion of his working test period, the Commission orders that the appellant be granted a retroactive date of appointment to the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay, except the relief enumerated above. Finally, the Commission notes that the appointing authority is **not required** to displace any appointee from the certification, however, if that must occur, the lowest ranked appointee from that certification shall be displaced.

ORDER

Therefore, it is ordered that this appeal be granted and certification OL200477 be returned to the appointing authority to allow the appellant to continue with the selection process as detailed above. If appointed, upon the successful completion of his working test period, the Commission orders that the appellant be granted a retroactive date of appointment to the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay, except the relief enumerated above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF FEBRUARY 2021

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